

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner's daughter is enrolled in the Department's Medicaid program, which includes coverage of most prescription drugs. However, many drugs that are covered under Medicaid require prior approval from the Department before payment can be made to a participating pharmacy. The Department also maintains a list of "preferred drugs", or generics, which must be used as a first resort unless medically contraindicated. Generally, non-generic mental health medications require prior approval. (See *infra*.)

2. On February 7, 2006 the petitioner's daughter was prescribed Stratera, a brand-name prescription medication whose uses include the treatment of hyperactivity. On that date the prescribing doctor's office staff called the Department to inquire about prior approval. The Department told them (correctly, see *infra*) that in order to gain prior approval for Stratera for ADD it had to be shown that a stimulant drug (like generic Ritalin) had to have been previously tried and proven to be unsatisfactory.

3. At that time, the petitioner's daughter had never been on medication of any kind. After the doctor reported to her the Department's policy (*supra*), the petitioner's mother elected to pay for a trial of Stratera herself, and to file an appeal of the Department's policy of requiring a prior trial of Ritalin. There is no claim or indication that the doctor felt that a trial of Ritalin would have been medically contraindicated, although it is clear that the doctor supported the petitioner's decision to try Stratera first.

4. The petitioner purchased Stratera for her daughter on February 9, March 4, and March 14, 2006, spending a total of \$329.77 out of her own pocket. The Board's records show that she requested a fair hearing (No. 20,242) on March 15, 2006.

5. After receiving the petitioner's appeal, on March 20, 2006 OVHA informed the petitioner by phone that it would approve coverage for Stratera. OVHA then informed the Board that the petitioner had orally withdrawn her pending fair hearing. On March 22, 2006 the Board sent the petitioner a letter requesting that she confirm that she had withdrawn her hearing.

6. On April 20, 2006 the Board received a notice from OVHA that the petitioner had appealed OVHA's refusal to backdate its approval of Stratera prior to March 20, 2006. Following an inquiry by the hearing officer, the Board docketed this appeal as No. 20,294 (the instant matter) and marked the petitioner's prior request for fair hearing (No. 20,242) as "withdrawn".

7. Hearings and status conferences were held in this matter on May 22, June 19, July 21, and September 25, 2006. The petitioner admits that she elected to start her daughter on Stratera in February, even though she had been informed that it was not covered by Medicaid, because she was personally opposed to using Ritalin, rather than based on any specific medical advice she received at that time. Fortunately, Stratera proved to be effective in treating her

daughter's problems, and has been covered by Medicaid since March.

8. The petitioner also maintains that someone at OVHA told her by phone in February 2006, after her daughter had started on Stratera, that Medicaid would cover payment of Stratera retroactively. The petitioner admits, however, that she still would have started her daughter on Stratera, and kept her on it, even if she knew it would not be covered until March 20, at the earliest, if at all. The petitioner also maintains that she would not have withdrawn her earlier request for fair hearing if she had known that she would not be reimbursed for purchasing Stratera in February and early March.

ORDER

The Department's decision is affirmed.

REASONS

As a general matter the Department's Medicaid regulations require the use of generic drugs. W.A.M. § M810. The Department has developed specific protocols for the coverage of mental health medications.¹ As of January 1, 2006, for the class of drugs (including Stratera) known as

"anti-hyperkinesia", generic drugs must be tried first unless medically contraindicated.² The only exception to this is for existing patients who were already receiving name brand drugs as of January 1, 2006 to be allowed to continue their current therapies so as "not to risk destabilization".³

In this case, the petitioner's daughter had never taken any mental health medication when the request for prior approval was made on February 7, 2006. On that date, OVHA correctly informed her doctors that the guidelines required the use of generic Ritalin unless medically contraindicated (i.e., history or current evidence of allergy, toxicity, or likely adverse interaction with other medications). Despite this advice, the petitioner elected, with her doctor's approval, to start her daughter on Stratera at her own expense.

A month and a half later, after the petitioner had filed an appeal, OVHA notified the petitioner that it would cover Stratera as of March 20, 2006. OVHA now maintains that this was an error, because the petitioner's daughter had not been stabilized on Stratera *as of January 1, 2006*, as required by

¹ See Vermont Preferred Drug List and Drugs Requiring Prior Authorization Clinical Guidance Manual.

² Manual pp. 45-46.

³ Manual pp.67-68.

its written policy (see *supra*), and had not tried generic Ritalin after that date. However, OVHA represents that *despite its error*, it will continue to provide Medicaid coverage of Stratera for the petitioner's daughter as long as it is effective. OVHA does not agree, however, that there is any basis to require Medicaid to reimburse the petitioner for the Stratera she purchased prior to March 20, 2006.

OVHA's position in this matter is supported by its written policies, which appear consistent with the regulations, and which, absent any claim or showing otherwise, the Board must assume were validly implemented. The only argument the petitioner could make for reimbursement for her purchases of Stratera prior to March 20, 2006 would be to show that she relied to her detriment on some misinformation given to her by the Department prior to that date. See e.g. Fair Hearing No. 18,365.

Unfortunately, the petitioner's allegations in this matter, even if found to be true, simply do not amount to any detrimental reliance on her part. She admits that she would have used Stratera for her daughter at her own expense rather than Ritalin or an equivalent generic regardless of what the Department might have told her regarding coverage of Stratera. Similarly, inasmuch as the instant appeal has

fully considered every factual and legal argument the petitioner has ever made regarding Medicaid coverage for Stratera, the petitioner lost nothing by "withdrawing" her earlier appeal, regardless of her reasons for doing so. At some point in time the petitioner may have *thought* that the Department had agreed to retroactively cover Stratera, but she has suffered no loss at all attributable to this belief, regardless of how she came to it.

It appears that by approving Medicaid coverage for her daughter for Stratera effective March 20, 2006 the Department has granted the petitioner a substantial benefit in this matter that it was not required to do under its regulations. Inasmuch as the Department's decision not to provide *retroactive* coverage in this matter is clearly in accord with its regulations, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing No. 17.

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